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 Captioning, LLC, YES Consulting, LLC,
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 de C.V., Autumn Communications, Inc.,
 and Business Training Works, Inc. on
 behalf of themselves and all others
 similarly situated

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 to named defendant Twitter, Inc.

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

WHITE COAT CAPTIONING, LLC; YES
 CONSULTING, LLC; CANCOMM LLC
 (DBA DIALOGUE INC.); DIALOGUE
 MÉXICO S.A. DE C.V.; AUTUMN
 COMMUNICATIONS, INC.; AND
 BUSINESS TRAINING WORKS, INC., on
 behalf of themselves and all others similarly
 situated;

Plaintiffs,

v.

TWITTER, INC.

Defendant.

Case No. 3:23-cv-1594-SK

JOINT RULE 26(f) REPORT

Date: Monday, September 11, 2023
 Time: 9:30 a.m.
 Location: San Francisco Courthouse
 Courtroom C -15th Fl
 450 Golden Gate Avenue
 San Francisco, California
 Judge: Honorable Sallie Kim

Pursuant to Federal Rule of Civil Procedure 26(f) and Local Rule 16-9, Plaintiffs White Coat Captioning, LLC, YES Consulting, LLC, Cancomm LLC (dba Dialogue Inc.), Dialogue México S.A. de C.V., Autumn Communications, Inc., and Business Training Works, Inc. (collectively, “Plaintiffs”) and X Corp., as successor in interest to named Defendant Twitter, Inc. (“X Corp.,” together with Plaintiffs, the “Parties”) jointly submit this report, and its Proposed Schedule of Pretrial and Trial Dates as follows:

1. JURISDICTION AND SERVICE

All Parties have been served. No dispute exists regarding personal jurisdiction or venue as to Plaintiffs White Coat Captioning, LLC, YES Consulting, LLC, Autumn Communications, Inc., and Business Training Works, Inc. The Court has subject matter jurisdiction over those Plaintiffs’ claims under 28 U.S.C. § 1332(a) and (d).

The Parties do dispute whether jurisdiction and venue are proper as to Plaintiffs Cancomm LLC (dba Dialogue Inc.) (“Cancomm”) and Dialogue México S.A. de C.V. (“Dialogue México”).

A. Plaintiffs’ Statement

Plaintiffs oppose Defendant’s motion to dismiss Cancomm and Dialogue México’s claims because the forum selection clause in the Master Services Agreement is void following Defendant’s breach of the agreement. Even if the forum selection clause is not void, the factors courts consider whether a party opposes enforcement of a forum selection clause weigh in favor of denying Defendant’s motion to enforce the forum selection clause.

B. Defendant’s Statement

Cancomm and Dialogue México entered into a contract governing the provision of services at-issue in their First Amended Class Action Complaint (the “Amended Complaint”), which contract provides that any claims arising from the agreement shall be litigated exclusively in courts in London, England. Cancomm and Dialogue México cannot bring their claims in this Court, and X Corp. has brought a motion, asking the Court to dismiss their claims with prejudice under the doctrine of *forum non conveniens* and *Atlantic Marine Construction Company v. United States District Court for the Western District of Texas*, 571 U.S. 49 (2013) (ECF 22). That motion is

1 scheduled to be heard the same day as the Initial Case Management Conference in this matter,
2 September 11, 2023, at 9:30 a.m.

3 **2. FACTS**

4 **A. Plaintiffs' Statement**

5 Plaintiffs White Coat Captioning, LLC, YES Consulting, LLC, Cancomm LLC (dba
6 Dialogue Inc.), Dialogue México S.A. de C.V., Autumn Communications, Inc., and Business
7 Training Works, Inc. all entered into agreements with Twitter (for which X Corp. is the
8 successor) to provide various services in 2022. Plaintiffs provided these services and submitted
9 invoices to Twitter for the services rendered under the terms of those contracts. Twitter marked
10 many of these invoices as "approved" in its payment processing system, but following Elon
11 Musk's purchase of the company, it did not issue payment. Plaintiffs all contacted Twitter
12 repeatedly and tried to obtain payment, but Twitter either ignored their requests or told them it
13 simply needed more time. Twitter never stated that the delay was due to some deficiency relating
14 to Plaintiffs' performance. Plaintiffs later learned that Mr. Musk had directed Twitter's
15 employees not to pay any vendors, telling them instead to "let [vendors] sue". Plaintiffs
16 anticipate discovery will show that Twitter maintained a database listing all approved but unpaid
17 invoices, including for Plaintiffs.

18 **B. Defendant's Statement**

19 Plaintiffs' purported and separate agreements with X Corp. contain varying terms
20 governing, among other things, the types of performance that Plaintiffs were obligated to deliver
21 and the pre-conditions that must be satisfied before payments were due. These include, for
22 example, identification of the Plaintiffs' respective personnel that were authorized to deliver the
23 specified services, and detailed descriptions of service deliverables under each of Plaintiffs'
24 agreements across different service sectors, e.g., public relations and personnel training. Some
25 of the purported agreements also include provisions stating that no payments are due until X
26 Corp. approved each milestone deliverable in writing, or that no payments were due until
27 milestones were completed to X Corp.'s reasonable satisfaction.

28 X Corp. has been undertaking an internal investigation regarding the allegations in

1 Plaintiffs' Amended Complaint but, due to personnel turnover at X Corp. before Plaintiffs served
 2 their original Complaint, has been unable to confirm whether Plaintiffs properly and fully
 3 discharged their contractual obligations. Plaintiffs may not have been providing deliverables and
 4 service levels as required under their separate and detailed agreements, and Plaintiffs' work may
 5 not have been completed to X Corp.'s reasonable satisfaction and / or approved in writing such
 6 that payments became due.

7 X Corp. also denies that the alleged putative class can be certified for various, similar
 8 reasons. X Corp.'s agreements with vendors, including customized statements of work, contain
 9 terms that vary across vendors and would be material to any dispute regarding purported
 10 nonpayment under any given agreement. The agreements contain terms, for example, that: (i)
 11 may specify acceptable levels of vendor performance that are tailored to a specific good or
 12 service to be delivered; (ii) set different prerequisites for when a vendor will be paid, including
 13 that X Corp. must approve in writing the good or service being delivered in milestones before
 14 payment is due; and (iii) may specify choice of law and exclusive venue provisions pointing
 15 outside of the Northern District of California.

16 These issues requiring individualized inquiry cannot be done efficiently on a classwide
 17 basis, as already illustrated in connection with X Corp.'s motion to dismiss Cancomm's and
 18 Dialogue México's claims, and those Plaintiffs' arguments and factual disputes regarding
 19 unsigned (purported) agreements with even further varying terms. Such issues, among other
 20 issues, will prevent a class from being certified under Fed. R. Civ. P. 23.

21 **3. LEGAL ISSUES**

22 The principal legal issues in dispute are:

- 23 1. Whether Plaintiffs have entered into binding agreements with X Corp.;
- 24 2. Whether Plaintiffs fully performed their obligations under their alleged
 25 agreements with X Corp;
- 26 3. Whether X Corp. failed to pay amounts to Plaintiffs that were purportedly owed
 27 to them under their agreements with X Corp.; and
- 28 4. Whether a class should be certified (Fed. R. Civ. P. 23).

1 **4. MOTIONS**

2 **A. Pending Motions**

3 On July 14, 2023, X Corp. filed a motion to dismiss Plaintiffs Cancomm's and Dialogue
 4 México's claims in the Amended Complaint, under the doctrine of *forum non conveniens* and
 5 *Atlantic Marine Construction Company v. United States District Court for the Western District*
 6 *of Texas*, 571 U.S. 49 (2013) (ECF 22). That same day X Corp. also filed a motion to strike
 7 Plaintiffs' class allegations under Fed. R. Civ. P. 12(f) (ECF 21). Those motions are fully
 8 briefed and scheduled to be heard the same day as the Initial Case Management Conference in
 9 this matter, September 11, 2023, at 9:30 a.m.

10 **B. Anticipated Motions**

11 Both Parties anticipate filing a motion for summary judgment, and any other motions as
 12 may be necessitated by the case, including possible discovery motions. Plaintiffs anticipate
 13 moving for class certification.

14 **5. AMENDMENT OF PLEADINGS**

15 The Parties propose that the deadline for amending the pleadings be set as provided in
 16 Section 16 below.

17 **6. EVIDENCE PRESERVATION**

18 The Parties certify that they have reviewed the ESI Guidelines. The Parties have also met
 19 and conferred pursuant to Fed. R. Civ. P. 26(f) and taken appropriate steps to preserve any and
 20 all evidence that may be relevant to the issues in this action.

21 **7. DISCLOSURES**

22 The Parties agree to exchange initial disclosures as set forth in Section 16 below.

23 **8. DISCOVERY**

24 No discovery has been served thus far and the Parties have not identified any discovery
 25 disputes.

26 Pursuant to Fed. R. Civ. P. 26(f), the Parties submit the following discovery plan:

27 **(1) Changes to disclosures.** The Parties do not expect any changes will be made in
 28 form or requirement of the Parties' Rule 26(a) disclosures, except for proposing to exchange

1 initial disclosures as set forth in Section 16 below.

2 **(2) Subjects on which discovery may be needed.** Discovery will be needed on the
3 legal issues set forth in Section 3 above.

4 **(3) Issues relating to disclosure or discovery of electronically stored information.**
5 If certain discovery is to be produced in electronic form, the Parties have agreed to meet and
6 confer, as necessary, to resolve any issues concerning electronic discovery as they arise.

7 **(4) Issues relating to claims of privilege or of protection as trial-preparation**
8 **materials.** The Parties will meet and confer as necessary to discuss if the issue arises.

9 **(5) Changes in limitations on discovery.** The parties do not foresee changes that
10 should be made in the limitations on discovery imposed under the Federal Rules of Civil
11 Procedure or the Civil Local Rules. If changes need to be made, the Parties agree to meet and
12 confer.

13 **(6) Orders that should be entered by the Court.** The Parties anticipate that a
14 protective order governing the treatment of confidential information will be required and will
15 submit a proposed order in the form of the Northern District's model order.

16 **9. CLASS ACTIONS**

17 **A. Plaintiffs' Statement**

18 Plaintiffs believe that, when discovery commences, it should proceed with respect to both
19 class certification and merits issues for a period of six (6) months. Plaintiffs may move for class
20 certification after discovery has begun.

21 **B. Defendant's Statement**

22 X Corp. believes that, when discovery commences, it should proceed with respect to both
23 class certification and merits issues for a period of ten (10) months. The first eight (8) months
24 will be devoted to written and oral fact discovery. The final two (2) months of this period will be
25 devoted to experts. At the close of this ten (10) month period, the Parties will brief class
26 certification according to X Corp.'s proposed schedule in Section 16 below.

27 X Corp. also anticipates that it would be unable to satisfy a more truncated schedule
28 given personnel turnover within the Company and the fact-intensive nature of the issues specific

1 to each vendor, and that there is no need for a shorter schedule.

2 **10. RELATED CASES**

3 None. Although Plaintiffs' counsel have filed a number of cases in this District on behalf
4 of former X Corp. employees, this is the only case they have filed concerning unpaid vendors

5 **11. RELIEF**

6 **A. Plaintiff's Position:**

7 Plaintiffs request that this Court:

- 8 a. Certify a class action and appoint Plaintiffs and their counsel to represent a class
9 of X Corp. (fka Twitter) vendors and contractors who signed Statements of Work and/or
10 entered into contracts for goods or services governed by X Corp. (fka Twitter) Master
11 Services Agreement or Independent Contractor Agreement anywhere in the United States
12 and have not received payment for the goods or services provided under the terms of their
13 contracts;
- 14 b. Award compensatory damages, including all payments owed for goods or services
15 provided or owed under the terms of the contract, in an amount according to proof;
- 16 c. Award pre- and post-judgment interest;
- 17 d. Award any other relief to which the Plaintiffs may be entitled.

18 **B. Defendant's Position:**

19 X Corp. disputes that any damages are appropriate. However, in the event that X Corp.
20 were to be found liable in this action, damages should not exceed what Plaintiffs pray on an
21 individual basis in the Amended Complaint.

22 **12. SETTLEMENT AND ADR**

23 The Parties have commenced preliminary settlement negotiations, but believe it will be
24 productive and efficient to first work directly with each other in efforts to resolve, before
25 reverting to more formal ADR mechanisms.

26 **13. OTHER REFERENCES**

27 This case is not suitable for reference.
28

14. NARROWING OF ISSUES

The Parties will most likely file one or more dispositive motions seeking to narrow the issues in this case. Both parties anticipate filing motions for summary judgment.

15. EXPEDITED TRIAL PROCEDURE

The Parties have not agreed to an expedited trial procedure.

16. SCHEDULING

The Parties propose that the Court adopt the following agreed schedule based on the Federal Rules of Civil Procedure and the Local Rules, and that the Court schedule a status conference to take place after ruling on Plaintiffs' anticipated motion for class certification to set dates regarding a deadline to file dispositive motions and all other pre-trial dates.

Given X Corp.'s pending motions to dismiss and to strike the class allegations, and that Plaintiffs may need to further amend their Amended Complaint depending on the Court's ruling on X Corp.'s motions, the Parties agree that their proposed scheduling dates be determined from either when the Court rules on X Corp.'s motions or when X Corp. ultimately files an Answer to the then-operative Complaint:

<u>Matter</u>	<u>Parties' Joint Request</u>
Deadline for X Corp. to Answer Complaint or for Plaintiffs to further Amend their Amended Complaint	21 days after the Court rules on X Corp.'s pending motions to dismiss and strike class allegations
Deadline to Serve Initial Disclosures	<p>If the Court denies X Corp.'s pending motions to dismiss and strike class allegations, 21 days after the Court rules</p> <p>If the Court grants either or both of X Corp.'s motions, 21 days after X Corp. Answers the then-operative Complaint</p>
Deadline to Amend Pleadings	If the Court denies X Corp.'s pending motions to dismiss and strike class allegations, 21 days after

the Court rules

If the Court grants either or both of X Corp.'s motions, 21 days after X Corp. Answers the then-operative Complaint

The Parties are unable to agree on a further proposed schedule, and set forth their respective positions below:

<u>Matter</u>	<u>Plaintiffs' Request</u>	<u>Defendant's Request</u>
Deadline to Complete Fact Discovery Related to Class Certification	Six (6) months after X Corp. Answers the then-operative Complaint	Ten (10) months after X Corp. Answers the then-operative Complaint
Deadline for Plaintiffs to File Motion for Class Certification and Serve Expert Disclosures re Class Certification	Four (4) months after X Corp. Answers the then-operative Complaint	Twelve (12) months after X Corp. Answers the then-operative Complaint
Deadline for X Corp. to File Opposition to Motion for Class Certification and Serve Expert Disclosures re Class Certification	Fourteen (14) days after Plaintiffs file Motion for Class Certification Plaintiffs do not believe experts will be needed in this case	Fourteen (14) months after X Corp. Answers the then-operative Complaint
Deadline to Complete Expert Discovery Related to Class Certification	Plaintiffs do not believe experts will be needed in this case	Fifteen (15) months after X Corp. Answers the then-operative Complaint

Proposed Hearing Date on Motion for Class Certification and Status Conference re Pre-Trial and Trial Scheduling	Thirty-five (35) days after Plaintiffs file Motion for Class Certification	Sixteen (16) months after X Corp. Answers the then-operative Complaint
Trial	July 2024	Premature to set a trial date at this time

17. TRIAL ESTIMATE

The Parties anticipate that the case will be tried to a jury and can be tried in a week.

18. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

All Parties have filed the Certification of Interested Entities or Persons. The Parties disclose that the following have an interest in this litigation:

1. White Coat Captioning, LLC – Plaintiff, financial interest;
2. YES Consulting, LLC – Plaintiff, financial interest;
3. Cancomm LLC– Plaintiff, financial interest;
4. Dialogue México S.A. de C.V. – Plaintiff, financial interest;
5. Autumn Communications, Inc. – Plaintiff, financial interest;
6. X Corp., successor in interest to named Defendant Twitter, Inc. – Defendant, financial interest; and
7. X Holdings Corp. – X Corp.’s parent company.

19. PROFESSIONAL CONDUCT

Counsel of record for the Parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

20. OTHER

Not applicable.

Respectfully submitted,

Dated: September 5, 2023

LICHTEN & LISS-RIORDAN, P.C.

By: 

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Dated: September 5, 2023

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